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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/915,408 | 07/26/2001 | Jochen Bollaender | 1697 | 7027 |

7590 08/23/2002

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EXAMINER

HARRIS, STEPHANIE N

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3636 | |

DATE MAILED: 08/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------------------|-------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/915,408 | BOLLAENDER ET AL. |
| | Examiner Stephanie N. Harris | Art Unit 3636 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the holder can travel no distance at all in a pulled out direction.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 8, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, it is unclear whether applicant is claiming that the holder travels no distance or travels a shorter distance in the carriage in a pulled out direction.

Claim 9 recites the limitation "said holder" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al. (USPN 5379978).

Patel et al. discloses a holding device for a beverage container that can be installed in an arm rest (Abstract). The holding device comprises a carriage (24) that is guidable as a drawer and can be displaced back and forth between a pushed-in and pulled out position (Abstract). A beverage container can be inserted in the pulled out position as seen in Figure 2. A guide means is used for guiding the carriage during its displacement between the pushed-in and pulled out positions (Col2 lines 59-68- Col. 3 line 1). A gravity locking device (32,54) is used to lock the carriage in the pushed in position.

Regarding claims 2, 3, and 4 the gravity locking device has a locking member which moves into a locked position when the carriage is in the pushed in position (Col. 4, lines 25-36). The gravity device also has a locking member which moves into an unlocked position when the carriage is in the pulled out position (Col. 3, lines 43-52). The locking member can be displaced at a slant relative to the directional placement of the carriage (Col. 4, lines 32-34).

Regarding claims 5-8, the holder has an insertion opening as seen in Figure 1. The holder is raisably guided on the carriage so that when the carriage is pulled out, the holder is raised and when the carriage is pushed in, the carriage is lowered back onto the carriage (Abstract). The guide means for raisably guiding the holder on the carriage is formed so that a path of raising the holder is oriented upwards in relation to the carriage and contrary to the pulled out position (Abstract). When pulling out the carriage, the holder travels a shorter distance in the carriage pulled out direction than the carriage. The guide means of the holder has a four lever mechanism. The carriage forms one lever and the holder forms an opposite lever of the four said lever. Links (42, 50) comprise the remaining two levers as seen in Figure 3.

Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lancaster et al. (USPN 5897089).

Lancaster et al. discloses a holding device for a beverage container that can be installed in an arm rest (Abstract). The holding device comprises a carriage (34) that is guidable as a drawer and can be displaced back and forth between a pushed-in and pulled out position (Abstract). A beverage container can be inserted in the pulled out position as seen in Figure 2. A guide means (38) is used for guiding the carriage during its displacement between the pushed-in and pulled out positions as seen in Figure 3. A gravity locking device (46) is used to lock the carriage in the pushed in position as seen in Figures 4 and 5.

Regarding claims 9 and 10, Lancaster et al. discloses a holding device (22) with an insertion opening as seen in Figure 3. The holder has an adjusting element (102), which movably mounted on the holder so that the size of the insertion opening is adjustable. The holder also has a securing device (90) with a catch device (96) for the adjusting element as seen in Figures 4 and 5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to holding devices for beverage containers: U.S. Pat. No. 5800011 to Spykerman, U.S. Pat. No. 5671877 to Yabuya, U.S. Pat. No. 5692718 to Bieck, U.S. Pat. No. 6427960 to Gehring et al., U.S. Pat. No. 5628486 to Rossman et al., and U.S. Pat. No. 5876007 to Lancaster et al.

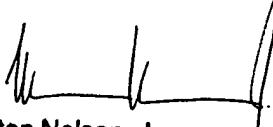
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SNH

August 20, 2002



Milton Nelson, Jr.
Primary Examiner